No. 84-471

Office Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1984

NATIONAL FEDERATION OF THE BLIND OF CALIFORNIA, a California Corporationm, MITCHELL POMERANTZ, MAUREEN SOUCY, BERT HAYNER, on behalf of themselves and all others similarly situated,

Petitioners,

vs.

COUNTY OF LOS ANGELES, RAYMOND ARCE, WILLIAM A. GOODMAN, JUDD HOLZENDORF and BENJAMIN VARGAS,

Respondents.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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MEMORANDUM OPPOSING CERTIORARI

While this case has had a lengthy procedural history, the factual background is simple, and the dispositive legal issue is the clear lack of a case or controversy.

The plaintiffs are three natural persons and the National Federation of the Blind of California (Federation).

The action was filed in August 1977, alleging that the California Superior Court's disqualification of the blind for jury service violated plaintiffs' federal constitutional and statutory rights. Although filed as a class action, the case was never certified as a class action. As ultimately amended, the action sought damages and injunctive relief.

Shortly after the case was filed, California enacted legislation which made the blind eligible for service as jurors.

The legislation was pending at the time the suit was filed. The trial court granted summary judgment to defendants in December 1979.

On appeal, the United States Court of Appeals, Ninth Circuit, affirmed in part, reversed in part, and remanded. The Court of Appeals affirmed on the issue of damages, finding the named officials immune, but reversed and remanded on the issue of whether the plaintiffs were entitled to immediate placement on a jury list (see Pet. 41a - 42a).

On remand, the district court determined that during the pending appeal all three named individual defendants had been called and placed on a jury list (see Pet. 53a - 54a). After considerable analysis of the Ninth Circuit's opinion, the district court determined that the scope of the remand did not include the issue of late class

certification, and that the Federation lacked associational standing (see Pet. 43a - 68a). The trial court dismissed the case as moot.

The state of the case or controversy between the parties was best described by the district court in ruling on plaintiffs' motion to modify judgment:

> "On the state of the record today, there is not a single person to whom the Ninth Circuit's mandate arguably could apply and the Federation has not named a single member who arguably could give it associational standing."
>
> (Pet. 73a - 74a)

The plaintiffs once again appealed. The Ninth Circuit Court of Appeals, acting through the indentical panel which had previously remanded the case to the district court, adopted the district court's

memorandum decision and dismissed the case as moot (see pet. 75a).

The same panel unanimously denied a petition for rehearing. The full court rejected petitioner's request for a rehearing en banc, (Pet. 76a - 77a).

The facts and legal arguments were more than adequately presented to the Court of Appeals. in the first appeal, oral argument had been presented on the issue of damages and on all issues of equitable relief. On remand, the district court determined that the three plaintiffs had all been placed on a jury list, and that there was no identified member of the Federation who was eligible for relief.

The petitioners have not identified one person who would benefit by the issuance of an injunction, and have not identified one person who has benefited from the institution of this action.

The case is simply and unquestionably moot.

DATED: 10/19/84

Respectfully submitted,

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Senior Deputy

Attorneys for Respondents